

STATE OF IOWA

BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

HAMILTON COUNTY PUBLIC
HOSPITAL,
Public Employer

and

HAMILTON COUNTY PUBLIC
HOSPITAL NURSES ASSOCIATION,
Petitioner

CASE NO. 4272

PROPOSED DECISION AND ORDER

Statement of the Case

James A. McClimon, Administrative Law Judge. Pursuant to a combined unit determination and bargaining representative determination petition filed under Chapter 4 of the Rules of the Public Employment Relations Board [Board], and Sections 13 and 14 of the Public Employment Relations Act [Act], a public hearing was held on November 16, 1990, in Webster City, Iowa. Post-hearing briefs were received by January 2, 1991, and on January 17, 1991, the record was closed when the parties submitted a list of the number of employees in each Hospital job classification.

The Hamilton County Public Hospital Nurses Association [Association] claims that the following constitutes an appropriate bargaining unit within the meaning of Section 13.2 of the Act:

INCLUDED: All registered nurses and licensed practical nurses in nursing services employed by the Hamilton County Public Hospital.

EXCLUDED: Supervisory and confidential employees excluded by Section 20.4, Code of

Iowa, and all other employees not specifically included in the bargaining unit.

The Hamilton County Public Hospital [Hospital] resists the Association's proposed bargaining unit, and the Hospital claims that an appropriate bargaining unit should include all professional and non-professional Hospital employees.

Based on the evidence and testimony presented at hearing; a review of 36 Hospital employee depositions; and the parties' post-hearing briefs, I make the following:

FINDINGS OF FACT

The Hamilton County Public Hospital is governed by a seven-member board of trustees and an administrator who is responsible for the Hospital's daily operation. The Hospital has 65 beds and one surgery suite. The Hospital employs 198 professional and non-professional employees; 24 supervisory or confidential employees; and three student employees.

The Hospital is organizationally divided into two divisions which are then sub-divided into several departments. The clinical services division is primarily responsible for direct patient care and other patient care needs. The departments in this division include, for example, respiratory therapy, pharmacy, laboratory, emergency and outpatient services, social and psychological services, physical therapy and nursing service. Departments in the fiscal and support services division include, for example, housekeeping, food service, medical records, maintenance, business office, personnel and purchasing.

The Hamilton County Public Hospital Nurses Association seeks to represent the 37 registered nurses (RN) and 7 licensed practical nurses (LPN) who work in the nursing service department of the Hospital's clinical services division. The Association does not seek to represent the registered nurses assigned to other Hospital departments.

All Hospital employees are covered by an Employee Handbook which establishes uniform personnel policies and fringe benefits; for example all Hospital employees are subject to the same layoff procedures; all employees receive life insurance equal to the employee's annual salary; and all Hospital employees have the same vacation, sick leave, and disability benefits. The Hospital has also established a pay scale in which each job classification is placed into one of 23 separate pay classifications. Certain professional and non-professional employees are placed in the same wage classification; for example employees in the job classifications of staff nurse I, radiology technician, plumber, and electrician receive the same base annual salary. Hospital employees are granted annual wage (longevity) increases based on the employees' years of service with the Hospital. In addition to longevity wage step increases the Hospital has historically granted employees annual cost of living wage increases. Under the Hospital's existing pay scale, employee salaries range from approximately \$11,000 to \$48,000 per year.

Job duties, responsibilities, training and educational job requirements vary significantly between professional and non-

professional Hospital employees. Most professional job positions require, as a condition of employment, either additional education beyond high school or an advanced degree. All Hospital registered nurses have graduated from an accredited school of nursing and licensed practical nurses have one year of training beyond a high school education. Certain professional and non-professional jobs also require a license or certification as a condition of employment, and these professional and non-professional employees are required to take continuing education courses in order to maintain a license or certification. RNs and LPNs are the only Hospital employees licensed by the Iowa Board of Nursing and they are subject to the provisions of Chapter 152, IOWA CODE, (Nurse Practice Act). Due to the specialized education, training, and certification required of most Hospital jobs, Hospital employees do not generally transfer to other job classifications.

A department director controls the daily operation of each Hospital department by supervising the professional and non-professional employees assigned to the department. Department directors establish job performance criteria; assign employees to work shifts; approve overtime; review leave of absence requests; schedule vacations; discipline employees; address employee complaints; and schedule periodic department meetings. Employee hours of work and overtime are based on departmental needs. RNs and LPNs assigned to the nursing service department have a 24-hour, three shift work schedule. Each department conducts its own in-service training and the Hospital conducts Hospital-wide meetings

regarding issues affecting all Hospital employees (e.g. fire safety). Inter-departmental meetings are also occasionally conducted in order to coordinate patient care efforts. All Hospital employees have daily contact as a result of sharing meal and break periods in the Hospital cafeteria.

Employee involvement with patient care varies significantly with each employee's job duties and responsibilities. Maintenance and housekeeping employees for example have limited contact with patients whereas registered nurses, licensed practical nurses, and employees with specialized medical training have more daily contact with patients.

Orders and directions prescribed by a patient's physician establishes which Hospital employee will be involved with a patient's health care. Registered nurses who work in the nursing service department are assigned to certain patients and these RNs provide daily patient care which includes coordinating medical tests and treatments prescribed by the patient's physician; observe, evaluate and assess the patient's condition; pass medications; and contact the patient's physician if needed. Licensed practical nurses who work in nursing service are also assigned to certain patients. LPNs work under the general supervision of a registered nurse. Licensed practical nurses monitor a patient's condition and pass medications. Unlike RNs, the LPNs do not perform intravenous injections nor do they independently make patient need assessments.

Other Hospital professional and non-professional employee contact with patients is based on the type of tests and health care prescribed by a patient's doctor. Medical technologists work approximately 90% of the time in the laboratory performing various tests. The medical technologists' contact with patients is limited to the time necessary to obtain blood samples. The clinical dietitian is primarily responsible to plan patient meals consistent with physician orders. The clinical dietitian spends approximately one hour with each patient in order to review and assess the patient's dietary needs. The Hospital's activity director has a nursing degree and she meets approximately 1 1/2 hours a week with nursing staff, therapists, and other employees to assess patient needs. Staff pharmacists prepare medications ordered by physicians. Staff pharmacists spend approximately 5% of their time with patients. Respiratory therapists' patient care responsibilities are limited to working with patients who require respiratory care and treatment. Respiratory therapists spend approximately 50% of their time with patients. The mental health therapist counsels patients. The mental health therapist spends approximately 25% of her time with patients admitted to the Hospital. Hospital paramedics and emergency medical technicians (EMTs) are primarily responsible to stabilize patients during emergencies and when transporting patients to different locations outside of the Hospital. Paramedics and EMTs assist in the emergency room under the direction of the emergency room RN and they distribute medications and administer intravenous injections.

The physical therapist works directly with registered nurses and licensed practical nurses approximately one hour per week. The physical therapist has direct patient care responsibilities with patients who require physical therapy. The physical therapy technician spends approximately 50% of her time in direct patient care.

The medical assistant spends approximately 25% of her time with patients in order to obtain blood samples to be used in various laboratory tests. The patient review nurse has a nursing degree, and is responsible for reviewing patient needs for post-Hospital care. The patient review nurse also works with physicians and insurance companies to coordinate required patient care consistent with the patient's insurance coverage and requirements. The laboratory technician's contact with patients is limited to the time necessary to secure blood samples for laboratory tests.

Employees who work in blue collar, secretarial/clerical, and support service job classifications provide various job functions within the Hospital. These employees' job titles clearly identify the employees' primary job duties and responsibilities; for example, switchboard receptionist, accountant, cook, housekeeping, maintenance, medical transcriptionist, file clerk, admissions clerk, computer operator, and stock clerk.

CONCLUSIONS OF LAW

I. Preliminary Matter

The Hospital and Association submitted, as evidence, the depositions of 36 professional and non-professional Hospital

employees. The deposition testimony concerned the education, training, job duties and responsibilities of 28 separate job classifications.

During the depositions the Hospital objected to an Association question posed to certain employees regarding whether the employees wish to be placed in a specific bargaining unit. The Hospital's objection is based on the following: (1) The employee's preference to be included in a specific bargaining unit is irrelevant because the Board-supervised secret ballot election process required by Section 14 of the Act is the only appropriate method which allows Hospital employees to decide whether the employees wish to bargain collectively; and (2) Any inquiry of a Hospital employee's preference to bargain collectively, other than by secret ballot, violates the employee's statutory rights protected by Section 8 of the Act.

The Association argues that it did not intend to solicit, by deposition, Hospital employee preference to vote for the Association.

Section 8 of the Public Employment Relations Act grants public employees certain rights, including the right to join or not join an employee organization, and Section 14 of the Act allows public employees to select, by secret ballot, a labor organization to represent public employees for purposes of collective bargaining. Clearly therefore any question posed to a Hospital employee during deposition to determine whether the employee wishes to be represented by the Association infringes on the rights granted

Hospital employees by Sections 8 and 14 of the Act. However, in this case the Association does not attempt to determine the Hospital employees' voting preference. Rather, I consider the question posed by the Association as limited to determining whether the employees wish to be included in a specific bargaining unit. The unit determination criteria found in Section 13.2 of the Act, which are more fully discussed below, requires the Board to determine as a relevant factor which public employees wish to bargain collectively by initiating the statutory unit determination process. The Association's question in this case is limited to determining employee bargaining unit preference and not an attempt to determine by deposition whether Hospital employees intend to vote for the Association. For these reasons the Hospital's objection is overruled.

This ruling does not stand for the proposition that either the Hospital or Association are required to demonstrate at hearing, through extensive employee testimony, support for their respective proposed bargaining units. I recognize that Hospital employee interest in collective bargaining may not be identical with those of either the Hospital or Association. Nonetheless, the fact that no other Hospital employees seek to initiate a unit determination proceeding before the Board, and the fact that no other employee organization seeks to represent Hospital employees, is sufficient evidence to demonstrate employee organizational interests without reliance on the testimony of each Hospital employee regarding the employee's bargaining unit preference.

II. LPN Professional Employee Issue

The Association, in its brief, requests reconsideration of prior Board caselaw in which the Board has concluded that licensed practical nurses are not professional employees within the meaning of Section 3.11 of the Public Employment Relations Act.

Section 3.11 of the Act defines a professional employee as:

a. Any employee engaged in work:

(1) predominately intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work;

(2) Involving the consistent exercise of discretion and judgment in its performance;

(3) Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and

(4) Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes.

b. Any employee who: /

(1) is performing related work under the supervision of a professional person to qualify the employee to become a professional employee as defined in paragraph "a" of this subsection.

The Association contends that due to their specialized education, training, job duties and responsibilities licensed practical nurses who work in the Hospital's nursing service

department are professional employees within the meaning of Section 3.11 of the Act.

The Hospital contends, in its brief, that licensed practical nurses are not professional employees because LPNs do not have a nursing degree and because, unlike registered nurses, LPNs do not independently perform patient care need assessments.

In State of Iowa, 77 PERB 1071, the Board placed licensed practical nurses in a statewide technical bargaining unit, and in that case the Board concluded:

We find that licensed practical nurses are not "professional employees" within the meaning of the Act. In so finding, we do not infer that licensed practical nurses are not professionals as that term is used in the generic sense. Rather, we find that a licensed practical nurse does not meet the stringent qualifications of the definition of professional employee set forth in the Act. (p.4).

Section 3.11(a) of the Act is written in the disjunctive because it provides that an employee is a "professional" if the employee's work is of a professional nature; that the work is not routine and requires a high degree of intellectual activity and the use of discretion; and the work requires knowledge of an advanced type acquired by a prolonged study of specialized intellectual instruction.

There is no question in this case that under the supervision of an RN, licensed practical nurses who work in the Hospital's nursing service department, provide direct patient care and it is undisputed that the LPNs' work is intellectual in nature as opposed

to routine or manual work. However, the facts presented here are identical to the facts utilized by the Board in State of Iowa, supra. In State of Iowa the Board found that although the first year of educational training for LPNs and RNs is substantially the same and interchangeable, the educational requirements of a registered nurse are, at a minimum, one additional year of education. Likewise in this case, Hospital licensed practical nurses are not required, as a condition of employment, to possess an advanced nursing degree. Rather the record demonstrates that licensed practical nurses have one year of specialized training beyond a high school education.

For these reasons, and consistent with prior Board caselaw, I conclude that Hospital licensed practical nurses are not professional employees within the meaning of Section 3.11 of the Act.

III. Appropriate Bargaining Unit Issue

The central issue in this case is an appropriate bargaining unit structure for professional and non-professional employees employed by the Hamilton County Public Hospital.

Section 13.2 of the Public Employment Relations Act provides that in determining an appropriate bargaining unit the Public Employment Relations Board shall:

...take into consideration, along with other relevant factors, the principles of efficient administration of government, the existence of a community of interest among public employees, the history and extent of public employee organization, geographical location, and the recommendation of the parties involved.

The Association contends that a bargaining unit of registered nurses and licensed practical nurses who work in the Hospital's nursing service department constitutes an appropriate bargaining unit within the meaning of Section 13.2 of the Act. The Association also contends, in the alternative, that a unit consisting of only nursing service department registered nurses is appropriate under the Act.

The Association recognizes that all Hospital employees are covered by uniform personnel policies and fringe benefits unilaterally established by the Hospital. The Association argues, however, that nursing service department RNs and LPNs share a separate "community of interest" in the following areas: Nursing service department RNs and LPNs are the only Hospital employees assigned to monitor a patient's overall health care needs, as opposed to other Hospital professionals who provide more technical and specialized patient treatment; RNs and LPNs are the only Hospital employees who are subject to the Nurse Practice Act; they are the only professional personnel who are licensed by the Iowa Board of Nursing; RNs and LPNs have similar educational job requirements; they have the same continuing education requirements; RNs and LPNs who work in the nursing service department have common supervision, and they have the same work schedules and work areas.

The Association notes that only the registered nurses and licensed practical nurses who work in the nursing service department have expressed an interest to bargain collectively with the Hospital. The Association argues, therefore, that to place

these registered nurses and licensed practical nurses in the Hospital's proposed "wall-to-wall" bargaining unit, which includes numerous Hospital employees who have not expressed an interest in collective bargaining, would effectively preclude the nursing service department RNs and LPNs from the right to choose how they wish to be organized and represented. The Association considers the Hospital's proposed "wall-to-wall" bargaining unit as an attempt to frustrate the nursing service department RN and LPNs' interest to bargain collectively by placing the RNs and LPNs in a bargaining unit consisting of diverse professional and non-professional job classifications.

The Association also considers a "wall-to-wall" bargaining unit, or separate professional and non-professional units, as emphasizing a Hospital bargaining unit structure based on a "diversity of interest" test as opposed to the "community of interest" standard required by Section 13.2 of the Act. The Association argues, therefore, that either a single Hospital-wide bargaining unit or separate professional and non-professional units would require the Association to organize employees who do not wish to bargain collectively. Such units, according to the Association, are more difficult to organize and would effectively preclude nursing service department RNs and LPNs from representing their own interests.

The Hospital contends that a "wall-to-wall" bargaining unit consisting of all full and part-time professional and non-professional employees is appropriate under Section 13.2 of the

Act. The Hospital also contends, in the alternative, that a "patient care" bargaining unit is an appropriate bargaining unit.

The Hospital recognizes that some employees have more direct patient care responsibilities than other Hospital personnel, but the Hospital argues that all employees share a "community of interest" in the following areas: all Hospital employees are covered by the same pay classification plan in which certain professional and non-professional employees receive the same annual salary; all Hospital employees are covered by uniform personnel policies and fringe benefits; all Hospital personnel work at the same location; and department directors supervise both professional and non-professional employees.

The Hospital argues that the Association's proposed bargaining unit of nursing service department registered nurses and licensed practical nurses is inconsistent with the "principles of efficient administration of government" standard found in Section 13.2 of the Act. The Hospital asserts, therefore, that the Association's proposed nursing service department RN/LPN bargaining unit, or any other bargaining unit based on Hospital departmental lines of authority, would require the Hospital to bargain separate department personnel policies and fringe benefits. The Hospital also argues that bargaining units based on union organizational activities within each department would constitute an undue proliferation of bargaining units for Hospital employees. The Hospital notes that the Association does not propose to represent the Hospital's discharge planner and emergency room registered

nurses who have nursing degrees and who also provide direct patient care services.

With respect to the Hospital's proposed "patient care" bargaining unit, the Hospital contends that a unit consisting of all professional and non-professional personnel assigned to the clinical services division is an alternative appropriate bargaining unit under the Act. The Hospital notes that most RNs, LPNs, nurse aides, and other medical specialists assigned to patient care responsibilities work in the clinical services division.

The Public Employment Relations Board has consistently held that bargaining unit determinations are made on a case-by-case basis in which the Board applies the Section 13.2 statutory criteria to the relevant facts of each employment situation. Moreover, the Board has previously concluded that application of the Section 13.2 criteria to the facts presented in each case does not require the Board to define the most appropriate bargaining unit. Rather the Act requires the Board to determine an appropriate bargaining unit.

The Board has also previously concluded that determination of an appropriate bargaining unit "...is not a precise science, and involves giving varying weights to numerous relevant factors under varying facts of employment relationships."¹ The Board acknowledges therefore, that "...in certain instances the balancing of the statutory criteria becomes tenuous and that unit

¹Des Moines Independent Community School District, 75 PERB 35 & 66, at p. 6.

determinations, made on a case-by-case basis, may turn on variations in employee responsibilities, pay or some other factors",² and that "the weight applied to any one factor may alter a decision regarding a unit's appropriateness."³

With respect to the Section 13.2 criteria "community of interest" and "principles of efficient administration of government", the Board has concluded:

Normally it is most efficient to designate as small a number of units as possible consistent with employees' rights to form organizations of their own choosing. However, where the diversity of the employees' community of interest is so great, as to inhibit meaningful and effective representation, a larger number of units may be necessary. Additionally, the inefficiency imposed by the creation of several units may outweigh community of interest or other Section 13.2 criteria. Accordingly, the number of bargaining units must be balanced against all of the Section 13.2 considerations.⁴

Board caselaw clearly establishes therefore that employment conditions vary from employer to employer, and the weight given to each Section 13.2 statutory criterion results in the different bargaining units the Board finds appropriate.

The bargaining unit issue presented in this case requires application of the Section 13.2 statutory bargaining unit criteria to the actual job duties and responsibilities of professional and non-professional employees working in health care. In the Board's

²Fort Dodge Community School District, 85 PERB 2626 at p. 4.

³Id. p. 5.

⁴Fort Dodge Community School District, at pp. 5-6.

latest health care bargaining unit case, Dickinson County Memorial Hospital, 85 PERB 2759, the Board concluded:

...a "disparity of interest" test long used as a practical matter by this Board, and recently adopted by the National Labor Relations Board, [St. Francis Hospital, 116 LRRM 1471 (1984)], is the appropriate criterion for bargaining unit determination in the health care area... [T]his test starts with the premise that separate units of all professional and all non-professional employees are appropriate, and the test then requires sharper than usual disparities in wages and terms and conditions of employment to be established at hearing in order to justify more than two units. However, the NLRB declined to adopt a rigid or "per se" disparity of interest test, in which units other than all professional or all non-professionals would be permissible; unless it could be shown that the interests of the petitioned for employees were so divergent that fair representation for them would be prohibited or inhibited without separate representation.

We believe it is important initially to recognize that the NLRB's disparity of interest test contains a presumption that two bargaining units are appropriate; one for professionals and one for non-professionals. It then allows for more units if the interests of the employees involved are so divergent as to prohibit or inhibit fair representation without the narrower unit. Such a standard is similar to our efficient administration of government definition set forth in Des Moines Independent Community School District. As a practical matter, both the NLRB test and Board standard require the smallest number of units consistent with the ability of the unit to bargain effectively. (Dickinson County Memorial Hospital at pp. 5-6).

Utilizing a disparity of interest test in Dickinson County Memorial Hospital, the Board determined that separate "patient care" and "support services" bargaining units were appropriate

under Section 13.2 of the Act, because employees in these units had distinct job duties and responsibilities. The Dickinson County Memorial Hospital patient care bargaining unit included registered nurses, licensed practical nurses, and other health care professional and non-professional job classifications. Unlike the issue presented in Dickinson County Memorial Hospital, the Hospital and Association in this case recognize the professional and non-professional status of certain Hospital employees.

A review of Board health-care bargaining unit caselaw issued prior to Dickinson County Memorial Hospital reveals that the Board has historically placed registered nurses in the same bargaining unit as other health care professionals. In Lucas County Public Hospital, 75 PERB 14, the Board found appropriate an otherwise agreed upon bargaining unit of all hospital professional and non-professional employees, subject to a majority affirmative vote of the professionals and non-professionals voting in favor of their inclusion in a single bargaining unit. Section 13.4 of the Act provides that professional and non-professional employees are included in the same bargaining unit if a majority of both groups agree, pursuant to a Board-supervised secret ballot election. In Broadlawns Polk County Hospital, 78 PERB 1237, the Board excluded registered nurses and other professional employees from a hospital-wide bargaining unit; however, in Broadlawns Polk County Hospital, 79 D.Ct. 1237, the district court disagreed and placed the registered nurses and professionals in a hospital "wall-to-wall" bargaining unit.

With respect to State bargaining unit determinations, in State of Iowa, 76 PERB 363 & 681, the Board included registered nurses in a statewide unit of health care professionals including for example the job classifications of social worker, physical therapist, pharmacist, and dietician. Likewise in State of Iowa, 76 PERB 641 & 682, the Board included registered nurses in a bargaining unit of other health care professionals at the University of Iowa Hospitals.

The Board also concluded in State of Iowa, 76 PERB 363, 364 et al., that the statutory criterion "efficient administration of government" necessitates, for most state employees, the determination of bargaining units consisting of broad occupational classifications of employees, and that exceptions to broad bargaining units will be made under compelling factors which the Board considers relevant to certain groups of employees. The Board's decision to determine broad State "horizontal" bargaining units, which include employees from various state departments and agencies as opposed to "vertical" units for each state department, only applies to State bargaining units. This "horizontal" bargaining unit standard does not apply to unit determinations made at the local health care level. The Hospital's reliance in this case on the Board's state health care unit determination caselaw to support the Hospital's proposed "wall-to-wall" bargaining unit is misplaced because the Board has not developed a "horizontal" unit determination standard for local health care institutions.

Nonetheless the Board has not previously granted registered nurses a separate bargaining unit at either the state or local health care levels. In State of Iowa, 76 PERB 363, 364 et al., the Board recognized the National Labor Relations Board's [NLRB] practice of granting registered nurses a separate bargaining unit. However in that case the Board stated:

We are...of the opinion that the specific nature of our collective bargaining law, as well as the nuances of public sector collective bargaining in general, mitigate against the established precedent of the private sector. We cannot ignore our own firmly established precedent that the principles of efficient administration of government require the designation of as small a number of units as possible, consistent with the requirement that the employees be permitted to form organizations of their own choosing to represent them in a meaningful and effective manner. Des Moines Independent Community School District, PERB Case Nos. 21, 125 & 126 (1975). In that decision, we prefaced our interpretation by stating that:

Hence, the most efficient administration of government would be that which produces the desired result, in this case meaningful public sector collective bargaining, with a minimum expenditure of resources (State of Iowa, at p. 19).

The question of balancing health care employee statutory rights to organize against the concern over an undue proliferation of bargaining units for health care institutions has historically affected the private sector caselaw since the enactment of the 1974 health care amendments to the National Labor Relations Act. The NLRB's "disparity of interest" test used by the Board in Dickinson

County Memorial Hospital, cited above, clearly reflects the Board's intent to avoid an undue proliferation of bargaining units in the health care industry, but the Board has previously noted⁵ that Dickinson County Memorial Hospital does not stand for the proposition that two bargaining units is the appropriate bargaining unit structure for all health care facilities.

The NLRB has now adopted administrative rules governing health care bargaining units. The NLRB's rules, which were challenged and upheld by the Seventh Circuit Court of Appeals in American Hospital Ass'n v. NLRB, 133 LRRM 3073 (1990), establish the following eight health care bargaining units: physicians; registered nurses; other professional employees; medical technicians including licensed practical nurses; skilled maintenance workers; clerical workers; guards; and other non-professional employees. These eight bargaining units generally apply to all acute health care institutions regardless of the institution's size and location.

The NLRB's decision to establish, by rule, specific health care bargaining units was clearly an attempt to respond to decisions from several appellate courts which criticized the NLRB's case-by-case approach to health care unit determinations. The extent of the court review and criticism of the NLRB's case-by-case approach has been viewed "...to be extremely cumbersome, and the Board's attempts to 'tailor' appropriate bargaining units to

⁵Anthorn-Oto Community School District, Decision on Remand, 85 PERB 2678.

individual cases have not always been successful."⁶ The Public Employment Relations Board, however, has not received the same criticism of its case-by-case approach to health care unit determinations, and the Association in this case does not suggest that the Board implement administrative rules defining public sector health care bargaining units. Rather, the Association utilizes the NLRB's recent rule making activities in support of its organizational efforts at the Hamilton County Public Hospital.

The National Labor Relations Board's administrative rules which grant a separate bargaining unit for registered nurses does not control the unit determination issue presented in this case. The newly adopted NLRB rules merely reflect prior NLRB caselaw precedent establishing a separate RN unit for acute health care institutions. As discussed above, the Board has previously rejected NLRB precedent for a separate RN bargaining unit in the public sector, and for the reasons more fully discussed below, a separate registered nurse unit is not appropriate in this case.

The Hospital considers the Association's proposed RN/LPN nursing service department bargaining unit as initiating the beginning of numerous units based on the Hospital's autonomous department structure. The Hospital also views any bargaining units based on union organizing activities within each department as creating unstable labor relations which will alter the historic working relationship between Hospital employees. Nonetheless,

⁶Kathleen A. Curran, The National Labor Relations Board's Proposed Rules on Health Care Bargaining Units, 76 Va. L. Rev. 118 (1990).

there is no question that the Hospital's proposed "wall-to-wall" bargaining unit would encompass divergent professional and non-professional job classifications with varying job duties and responsibilities. Moreover the Board has not previously determined, unless otherwise agreed by the parties, that such a Hospital-wide unit is appropriate under Section 13.2 of the Act.⁷ The Hospital's proposed "patient care" bargaining unit, however, is similar to the unit found appropriate by the Board in Dickinson County Memorial Hospital, cited above. Dickinson County Memorial Hospital and the Hamilton County Public Hospital are similar in size. Dickinson County Hospital has 65 beds and employs 140 persons and the Hamilton County Hospital has 65 beds and employs 198 people.

In this case the Hospital prefers to deal with as few bargaining units as possible which, in practice, decreases the Association's chances of winning a representation election. The Association on the other hand proposes smaller units, which it appears from the record presented in this case, is based in large part on the Association's organizational activities within the Hospital's nursing service department. The Association, however, does not seek to represent other Hospital registered nurses who also have direct patient care responsibilities; for example RNs assigned to the emergency room and surgery departments.

Based on the Hospital and Association's proposed bargaining units, the unit determination in this case will, at a minimum,

⁷See Lucas County Public Hospital, 75 PERB 14.

establish the Association's chances of winning a representation election. There is no question that Hospital employees who work in both the support services division and the clinical service division are dedicated to providing quality health care, but nursing service department registered nurses and licensed practical nurses are the only Hospital employees who are interested in bargaining collectively with the Hospital. With respect to the Board's consideration of a union's organizational efforts in a unit determination proceeding, the Board has previously concluded in State of Iowa, 86 PERB 2743, that:

A union's organizational activities within a particular group of employees does not control bargaining unit determinations... Nonetheless, we believe that employee interest in collective bargaining is a relevant factor to be considered in determining an appropriate bargaining unit under Section 13.2 of the Act... The effectiveness and meaningfulness of collective bargaining depends in large part upon whether employees in a bargaining unit share a community of interest, which means that employees must have compatible interests and concerns over matters subject to the collective bargaining process (State of Iowa, at p. 20).

To adopt the Hospital's proposed "wall-to-wall" bargaining unit would add numerous professional and non-professional employees to the unit proposed by the Association. Clearly the inclusion of these support service division and clinical service division employees in the same bargaining unit would require the Association to organize groups of employees who have not expressed an interest in collective bargaining. The record further demonstrates that all

professional and non-professional Hospital employees do not have compatible collective bargaining interests and concerns. Rather, the facts show that other than being subject to the same uniform personnel policies and fringe benefits which have been unilaterally established by the Hospital, most professional and non-professional Hospital personnel have distinct job duties, responsibilities, and interests which are clearly identified by the autonomous department structure found within the Hospital's organizational structure.

Given the autonomy of each Hospital department and the specialized medical training of many Hospital employees within each department, it is reasonable to conclude that there are several groups of employees who consider themselves to have common interests distinct from other groups of employees. This does not mean, however, that each job classification, department, or group of employees with specialized medical training identifies a separate bargaining unit. Clearly, granting each employee group a separate unit would produce an undue proliferation of bargaining units within the Hospital. Although the facts demonstrate that nursing service department RNs and LPNs have certain unique job requirements and responsibilities, these working conditions are not unrelated to other professionals who have patient care responsibilities.

The Association argues that effective and meaningful collective bargaining can only be accomplished by determining either a combined RN/LPN nursing service department unit or a separate RN unit within the nursing service department. The Board

has consistently held that the meaningfulness and effectiveness of employee representation requires an examination of all of the Section 13.2 statutory criteria: the history and extent of public employee organization; geographical location; the recommendation of the parties; the existence of a community of interest among public employees; and efficient administration of government.

The Section 13.2 criterion "history and extent of public employee organization" does not support the Association's RN/LPN or separate RN bargaining units in this case. There is no history of formal negotiations between the Hospital and the Association representing these nursing service department RNs or LPNs, and there is no evidence that the Association has any history of dealing with the Hospital in an informal manner on behalf of RNs or LPNs.

With respect to geographical location, the record reveals that all Hospital employees work at the same physical location. All Hospital personnel interact with each other throughout the work day and Hospital employees share meal and break times in the Hospital's cafeteria. Nonetheless, the record shows that professional and non-professional employees who have patient care responsibilities are more often to interact with each other as opposed to other Hospital employees within the support services division.

The Section 13.2 statutory criterion "recommendation of the parties" is not relevant in this case because the Hospital and Association disagree over the bargaining unit placement of nursing service department RNs and LPNs.

Unit determination cases require the Board to balance the potentially conflicting aims of the Section 13.2 criteria "community of interest" and "efficient administration of government". Traditional community of interest considerations generally support separate bargaining units based on identifiable job functions and working conditions, and these considerations justify smaller and potentially numerous bargaining units. The "efficient administration of government" consideration however is intended to avoid an undue proliferation of bargaining units.

"Community of interest" is an important criterion in any bargaining unit determination and "community of interest" has been previously defined by the Board to include such factors as similarity of employee job qualifications, fringe benefits, and similar terms and conditions of employment.⁸ It is well settled however, that "community of interest" requires similar, not identical, job factors and other conditions of employment.⁹ Moreover the Board has concluded that groups of employees must have an identifiable community of interest distinguishable from other employees to justify a separate bargaining unit, and the Board has held that the "efficient administration of government" criterion requires avoiding fragmenting of similar types of employees into

⁸City of Des Moines, 76 PERB 559.

⁹Des Moines Independent Community School District, 84 PERB 2498; Mid-Prairie Community School District, 85 PERB 2595.

different bargaining units, unless some other statutory factor compels such a division.¹⁰

I cannot conclude from the employee job duties and responsibilities presented in this case that placing nursing service department registered nurses and licensed practical nurses in a patient care bargaining unit will somehow inhibit meaningful and effective representation for nursing service department RNs and LPNs. Indeed the record shows that regardless of the amount of time each Hospital professional and non-professional employee spends with patient care on a daily basis, these professional and non-professional employees have similar job functions. I recognize that due to the specialized education, medical training, and certification required of most Hospital jobs, Hospital employees do not generally transfer to other job classifications. Nonetheless to place nursing service department RNs and LPNs in a separate bargaining unit would ignore the patient care responsibilities of other Hospital employees who likewise provide health care, diagnostic, and related medical care to Hospital patients. The autonomous Hospital department structure which provides for separate employee supervision and department objectives, clearly evidences a degree of separate patient care functions within the Hospital, but this departmental structure does not necessitate numerous bargaining units based on department organizational responsibilities.

¹⁰State of Iowa, 77 PERB 1071.

All patient care professional and non-professional employees are required to have medical training and skills which directly impact on the Hospital's mission to provide overall quality health care. The record shows that nursing service department registered nurses and licensed practical nurses are the only Hospital employees who are assigned to a three-shift 24-hour work schedule, and the facts show that RNs and LPNs are the only professional employees licensed by the Iowa Board of Nursing and subject to the Nurse Practice Act. Nonetheless the record also demonstrates that most professional patient care jobs require, as a condition of employment, either additional medical education beyond high school or an advanced degree, and certain patient care professionals and non-professionals also require a license or certification as a condition of employment. Most importantly the facts show that orders and directions prescribed by a patient's physician establishes which patient care personnel will be involved with a patient's health care. Nursing service department registered nurses are required to evaluate and assess a patient's condition which requires more daily contact with patients. The fact that other patient care employees are involved with patients on a more limited basis, based on the patient's illness, does not diminish other patient care employees' contribution to providing overall quality health care. The remaining Hospital job classifications provide support services to personnel involved with direct patient care responsibilities. These support service employees have no patient care responsibilities; they are not required to possess

medical training or certification in medically related health care; and support service personnel contact with patients is unrelated to the patient's medical needs. Support service personnel include for example employees assigned to housekeeping, food service, medical records, maintenance, business office, personnel and purchasing departments. The distinct job functions of support service employees require a finding that they be placed in a bargaining unit separate from employees directly involved in patient care.

Based on the skills, abilities, and job qualifications required of the diverse personnel working at the Hospital, I conclude that separate bargaining units for patient care and support services employees are appropriate under Section 13.2 of the Act.

Section 13.4 of the Public Employment Relations Act provides that professional and non-professional employees are included in the same bargaining unit if a majority of both groups agree. In this case a patient care bargaining unit may include both professional and non-professional job classifications. As discussed above, the Section 13.2 unit determination criterion "efficient administration of government" requires that the Board avoid placing similar types of employees in different bargaining units unless some other statutory factor compels such a division. Section 13.4 of the Act compels a division of the patient care bargaining unit into separate professional and non-professional patient care units unless patient care professionals and non-professionals vote to be included in the same bargaining unit.

Based on the foregoing Findings of Fact and Conclusions of Law, the following Order is issued:

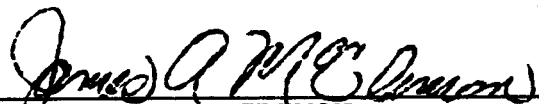
ORDER

1. The Hamilton County Public Hospital and the Hamilton County Public Hospital Nurses Association shall submit to the undersigned administrative law judge within fourteen (14) calendar days of the date below separate lists of the professional and non-professional job classifications included in a patient care bargaining unit of employees assigned to either the fiscal and support services division or clinical services division. The professional and non-professional lists shall also identify by job classifications the job classifications excluded from the patient care bargaining unit(s).

2. The Hamilton County Public Hospital and the Hamilton County Public Hospital Nurses Association shall submit to the undersigned administrative law judge within fourteen (14) calendar days from the date below a list of the job classifications included and excluded from a support services bargaining unit.

3. Upon receipt of the lists of professional and non-professional job classifications required by Item #1, above, the undersigned administrative law judge will issue an order of election for employees in the patient care bargaining unit.

DATED at Des Moines, Iowa this 29th day of March, 1991.



JAMES A. McCLIMON
ADMINISTRATIVE LAW JUDGE